

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRADFORD C. COUNCILMAN,

Plaintiff,

v.

ALIBRIS, INC.
MICHAEL WARCHUT
PETER KROTKOV

Defendants.

Civil Action No. 04-30208-MAP

**PLAINTIFF'S MOTION FOR A STAY, OR IN THE ALTERNATIVE, FOR AN
EXTENSION OF TIME TO RESPOND TO MOTIONS TO DISMISS**

Bradford C. Councilman respectfully moves to stay all proceedings in the above-referenced case pending the outcome of the pending government appeal in *United States v. Councilman*. Alternatively, Mr. Councilman moves the Court to either convene a status conference within 30 days after the Court of Appeals rules or April 1, 2005, whichever is earlier, or grant Mr. Councilman leave to file pleadings in response to the defendants' motions to dismiss not later than 30 days after the Court of Appeals rules.

1. The gravamen of all of Mr. Councilman's claims is that the defendants falsely implicated him in crimes and caused him to be erroneously prosecuted in order to obtain favorable treatment for themselves from law enforcement authorities and others.

2. At the request of counsel for all defendants, plaintiff agreed to relieve them of the obligation to answer or otherwise respond within 20 days after service of the complaint and summons and instead to file responsive pleadings 30 days after undersigned counsel notified them of the outcome of the pending government in appeal in *United States v. Councilman*. The assented to motion to extend time to respond to the complaint was first filed on October 12,

2004. Paragraph 5 of that agreement states that the parties would “report to the Court on the status of this matter when the First Circuit issues its ruling in *United States v. Councilman* or April 1, 2005, whichever is earlier.” Councilman agreed to the defendants’ request because the defendants pointed out that the course of proceedings and the merits of this lawsuit might be materially affected by the outcome of the government’s appeal, particularly if the criminal case is remanded for trial.

3. On January 31, 2005, Alibris, Inc. filed a motion to dismiss Councilman’s complaint. On February 4, 2005, Mr. Krotkov filed virtually identical papers.

4. Having induced Mr. Councilman to extend the time to answer or otherwise respond to his complaint until after the Court of Appeals rules, the defendants should not be heard to insist that litigation of the merits of this case proceed before the result of the appeal is known. The reason that the defendants sought and obtained the prolonged extension of time in which to respond is because the First Circuit’s ruling may materially affect the pleadings, the course of proceedings, and the outcome of this civil case. Reciprocal fairness and judicial economy would be served by granting this motion.

Dated: February 4, 2005

Respectfully submitted,

/s/ Andrew Good
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